

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

ALEXANDER VAN DER LELY ET AL

Serial No.: 10/073,015

Filed: February 12, 2002

For: AN ARRANGEMENT FOR AND A METHOD OF MANAGING
A HERD OF ANIMALS

Docket No.: 8553/250

RESPONSE

To the Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is in response to the office communication dated August 24, 2006 in the above-identified Application.

In regard to such Application, a restriction requirement was set forth between:

Group I - Claims 55-95, directed to an arrangement for managing a herd of domesticated animals;

Group II - Claims 96-104 drawn to a method of managing a herd of domesticated animals.

Applicants provisionally elect the Group I claims, 55-95, with a traverse. The basis for the Restriction is that the inventions listed as Groups I and II do not relate to a single general inventive concept because they lack the same or corresponding special technical features in that Group I requires at least one feeding trough, including closure means, a central unit provided with a computer having a memory, the memory containing data for each animal and the data being utilized to aid in the management of the herd, whereas the Group II claims require determining the statuses of each animal as to its hierarchy order, its jostling behavior, and its gourmet behavior. It is stated that "to determine statuses" does not require the special technical features of Group I and therefore a restriction is required.

It is fundamental patent law that each claim defines an inventive concept separate from every other claim and therefore to utilize the reasoning set forth in the Official Action for the restriction requirement would, at its extreme, require a restriction requirement for each claim which is absurd.

In this case, although the election set forth in this Response is to the Group I claims. The inventive concept disclosed in this Application relates initially as set forth in Claim 96 to the novel method of managing a herd of domesticated animals in which a number of automatic animal related procedures are automatically performed and the method comprises the step of determining the statuses of each animal in the herd as to its hierarchy order and as to its jostling behavior order. In Claim 104 determination is also made relative to each animal's gourmet behavior. Such method is a basic concept even though other claims in the Application relate to various types of apparatus useful for carrying out such method. Where individuals have invented a method and apparatus for its practice, each of which meets all the statutory requirements for patentability, both the method and apparatus claims should be allowed. On this point, attention

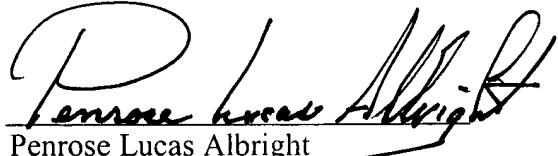
of the Examiner is invited to *ex parte Harnett*, 61 USPQ 100 (POBdApp 1943); *In re DeLancey*, 1947 CD 183; *Ex parte Kennedy*, 105 USPQ 338 (POBdApp 1955); and *Buffalo Forge Cup Co. v. City of Buffalo*, 255 Fed 83. Claim 96 referred broadly to certain instrumentalities which are essential to carrying out the method. The method thus defines a manner of use of Applicants' disclosed structure for the purpose of which it was designed and for which there was no suggestion in the many prior art devices which are of record in the Application. The inclusion broadly to instrumentalities essential for carrying out the method are necessary to define properly the method and do not render the claim improper but, to the contrary, they limit the claim and make it more definite. For similar claims which have been approved, the Examiner's attention is invited to *ex parte Harriss*, 71 USPQ 301 (POBdApp 1946); *Ex parte Masse*, 63 USPQ 127 (POBdApp 1943); *In re Fine*, 1953 CD 126; and *In re Washburn*, 1950 CD 404. The Examiner has not cited any cases in support of the proposition that a method claim which depends upon the operation of a specific apparatus is improper. A great many methods may be carried out by a variety of apparatuses. But the mere fact that the method claim recites the function and use of apparatus created to perform the method does not, in itself, render the claim to the method improper. *Ex parte Nelson and Cosby*, 82 USPQ 115 (POBdApp 1948). The inventive concepts of the Group I and Group II claims are not independent and distinct with the plain meaning of 35 U.S.C. §121.

In summary, the inventors by this Response have elected the Group I claims, 55-95, to be examined. However, the restriction requirement has been traversed. Applicants' invention is based on their observation and study of cow psychology and physiology. By utilization of Applicants' knowledge, a more docile and better behaved herd eventually results which is significantly more valuable and productive. It is submitted that the inventive concepts which

lead to this result fall well within the criteria of patentability as defined by 35 U.S.C. §102 and 103 whereby an allowance of claims as now presented is in order.

Respectfully submitted,

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